IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 400 of 2004(V)

OS.69/1997 of MUNSIFF COURT, TIRUR
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PETITIONER:

HAVVA UMMA,
W/O. MAMAKKANAKATH ABDULKHADER, KURUMBATHUR,
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:
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1. SAKTHI HARDWARES,
REPRESENTED BY MANAGING PARTNER,
VATTAPARAMBIL USMAN HAJI, S/O. MAMMUNNI,
PUNNATHALA, KURUMBATHUR, TIRUR TALUK,
MALAPPURAM DISTRICT.

2. VALLAPARAMBIL USMAN HAJI,
S/O. MAMMUNNI, PUNNATHALA, KURUMBATHUR,
TIRUR TALUK, MALAPPURAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 400 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE DECREE OF THE COURT OF THE MUNSIFF OF TIRUR IN OS NO.69 OF 1997 DT.31.1.03.

EXT.P1(A) : TRUE COPY OF THE JUDGMENT IN OS NO.69 OF 1997 OF THE MUNSIFF COURT, TIRUR DT.31.1.03.

EXT.P2 : TRUE COPY OF THE ORDER OF THE COURT OF THE MUNSIFF OF TIRUR IN IA NO.1448 OF 2003 IN OS NO.69 OF 1997 DT.29.8.03.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 400 OF 2004

Dated this the 15th day of June, 2007

JUDGMENT

The writ petition is remaining defective for want of service of notice to 2nd respondent. But I notice from Exts.P1 and P1 (a) judgment and decree that 1st respondent is tenant of the building which is the subject matter of the suit which is one for eviction with arrears of rent. The 1st respondent herein is represented by the Managing partner of M/s.Sakthi Hardwares of which the 2nd respondent is only a partner. Under these circumstances, I dispense with issuance of notice to 2nd respondent. Hence service is complete. There is no representation for the respondents.

2. Heard Sri.T.Krishnanunni, learned counsel for the petitioner.

3. Ext.P2 order passed by the trial court on a cheque application submitted by the petitioner plaintiff for withdrawal of a sum of Rs.2,86,900/- deposited by the respondents pursuant to a conditional order of stay granted by the appellate court in an appeal preferred by the respondents is under challenge.

Having gone through Ext.P2 and having heard the submissions of the learned counsel for the petitioner, I am of the view that the learned Munsiff was justified in directing the petitioner to move the appellate

court for appropriate modification or clarification of the stay order. In all probability the appellate court has either modified the order or the appeal itself has already been disposed of at this distance of time. There is no justification for interfering with Ext.P2 and that too under the supervisory jurisdiction.

PIUS C. KURIAKOSE, JUDGE

btt